

**TRANSLATION****PATENT COOPERATION TREATY****PCT****INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY**

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

|   |  |  |
|---|--|--|
| Applicant's or agent's file reference<br><b>P212403PC-WT</b>  | <b>FOR FURTHER ACTION</b>  | See Form PCT/IPEA/416  |
| International application No.<br><b>PCT/EP2004/012089</b>   | International filing date ( <i>day/month/year</i> )<br><b>21.10.2004</b> | Priority date ( <i>day/month/year</i> )<br><b>23.10.2003</b> |
| International Patent Classification (IPC) or national classification and IPC<br><b>A61K7/02, A61K7/48</b> |  |  |
| Applicant<br><b>COTY B.V.</b>   |  |  |

|   |
|---|
| 1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.  |
| 2. This REPORT consists of a total of <u>5</u> sheets, including this cover sheet.  |
| 3. This report is also accompanied by ANNEXES, comprising:<br>a. <input checked="" type="checkbox"/> ( <i>sent to the applicant and to the International Bureau</i> ) a total of <u>3</u> sheets, as follows:<br><input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).<br><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.<br>b. <input type="checkbox"/> ( <i>sent to the International Bureau only</i> ) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions). |
| 4. This report contains indications relating to the following items:<br><input checked="" type="checkbox"/> Box No. I Basis of the report<br><input type="checkbox"/> Box No. II Priority<br><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability<br><input type="checkbox"/> Box No. IV Lack of unity of invention<br><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement<br><input type="checkbox"/> Box No. VI Certain documents cited<br><input type="checkbox"/> Box No. VII Certain defects in the international application<br><input type="checkbox"/> Box No. VIII Certain observations on the international application  |

|   |                                   |
|---|-----------------------------------|
| Date of submission of the demand        | Date of completion of this report |
| Name and mailing address of the IPEA/EP | Authorized officer                |
| Facsimile No.                           | Telephone No.                     |

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/EP2004/012089

## Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language \_\_\_\_\_, which is the language of a translation furnished for the purposes of:
- ☐ international search (Rule 12.3 and 23.1(b))
- ☐ publication of the international application (Rule 12.4)
- ☐ international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the **elements** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:
- ☐ the international application as originally filed/furnished
- ☒ the description:
- pages 1-17 \_\_\_\_\_ as originally filed/furnished
- pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- ☒ the claims:
- nos. \_\_\_\_\_ as originally filed/furnished
- nos.\* \_\_\_\_\_ as amended (together with any statement) under Article 19
- nos.\* 1-11 \_\_\_\_\_ received by this Authority on 23.08.2005 with letter of 22.08.2005
- nos.\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- ☒ the drawings:
- sheets 1 \_\_\_\_\_ as originally filed/furnished
- sheets\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- sheets\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, nos. \_\_\_\_\_
- ☐ the drawings, sheets/figs \_\_\_\_\_
- ☐ the sequence listing (*specify*): \_\_\_\_\_
- ☐ any table(s) related to sequence listing (*specify*): \_\_\_\_\_
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, nos. \_\_\_\_\_
- ☐ the drawings, sheets/figs \_\_\_\_\_
- ☐ the sequence listing (*specify*): \_\_\_\_\_
- ☐ any table(s) related to sequence listing (*specify*): \_\_\_\_\_

\* If item 4 applies, some or all of those sheets may be marked "superseded."

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/EP2004/012089

| Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement  |                    |     |
|-----------|--|--------------------|-----|
| 1.        | Statement  |                    |     |
|           | Novelty (N)  | Claims <u>1-11</u> | YES |
|           |  | Claims _____       | NO  |
|           | Inventive step (IS)  | Claims <u>1-11</u> | YES |
|           |  | Claims _____       | NO  |
|           | Industrial applicability (IA)  | Claims <u>1-11</u> | YES |
|           |  | Claims _____       | NO  |
| 2.        | Citations and explanations (Rule 70.7)   |                    |     |
|           | Reference is made to the following documents:  |                    |     |
|           | D1: US-A1-2003/165451  |                    |     |
|           | D2: EP-A-1 013 256   |                    |     |
|           | D3: WO-A-2004/066918   |                    |     |
|           | <p><b>1.</b></p> <p><b>1.1</b> Claim 9 is worded as dependent on claims 1-7. The composition indicated therein is, however, more general than the composition in claim 1. Consequently, there are doubts as to the scope of protection sought by claim 9. The objection could be addressed by deleting the composition from claim 9.</p> <p><b>1.2</b> The description has not been brought into line with the claims. Similarly, the closest prior art has not been acknowledged.</p> <p><b>2.</b> The subject matter of the present claims is novel, since none of the documents discloses preparations containing a composition according to claim 1.</p> <p>D1 (see claims; examples; paragraphs 135-138) discloses cosmetic compositions for protecting the skin, e.g.,</p> |                    |     |

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/EP2004/012089

| Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
|-----------|---|
|-----------|---|

against sunlight (weather-related negative environmental influences) with an aqueous and an oily phase. The oily phase contains a semicrystalline polymer. The compositions contain an organic powder, thickening agents, solvents and further cosmetic constituents. D1 does not disclose any preparations containing a cross-linked polyester and a triblock-, star-, radial-, or multiblock polymer as per claim 1.

D2 (see claims; examples; paragraphs 35-39) discloses cosmetic compositions for hair containing oils, a film-forming polymer and a water-absorbing powder. The preparations contain thickening agents, solvents and further cosmetic constituents.

D2 does not disclose any preparations containing a triblock-, star-, radial- or multiblock polymer as per claim 1 and a cross-linked polyester.

D3 is relevant only to an assessment of novelty in a European regional phase. D3 discloses (see D3: examples; claims; page 17, line 5, page 20, line 15) cosmetic compositions containing triblock polymers and cross-linked polyesters (see table 1: Versagel (triblock), Lexorex 200 (cross-linked polyester)). In addition, the preparations can contain fillers in powder form, comprising powders that are indicated in the present claim 1 (see D3: page 29, line 19 - page 31, line 6). The presence of an emulsifier in D3 does not constitute a difference with respect to the subject matter of claim 1, since the presence of an emulsifier is not excluded. An objection concerning the lack of novelty of claim 1 with respect to the disclosure of D3 therefore would

Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;  
citations and explanations supporting such statement

therefore appear to be justified in a regional European phase.

**2.2** D1 can be considered the closest prior art.

D1 discloses preparations containing a cross-linked polyester and a triblock-, star-, radial- or multiblock polymer as per claim 1. The applicant has shown plausibly that the presence of a cross-linked polyester together with a triblock-, star-, radial- or multiblock polymer leads to a synergistically higher water-resistance (less release of dye in the test). The technical problem with respect to D1 as the closest prior art would then be the provision of cosmetic compositions for protecting the skin, said compositions containing powder and polymers, and improved water-resistance.

A person skilled in the art intending to solve this problem would obtain no suggestion from the available prior art (D1, D2) as to producing preparations as per claim 1, i.e. as to adding to the preparations of D1 a cross-linked polyester and a triblock-, star-, radial- or multiblock polymer as per claim 1. An inventive step can therefore be acknowledged.